

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of:)	
)	
Request for Universal Service)	WC Docket No. 06-122
Administrative Company's Request)	CC Docket No. 96-45
For Universal Service Fund)	
Policy Guidance)	
)	

COMMENTS

Nidus Group LLC. d/b/a Atomic Mobile ("Atomic") submits these comments in response to the March 7, 2011 Public Notice in the above-referenced proceeding.¹

I. Introduction

The Universal Service Administrative Company ("USAC") requested that the Federal Communications Commission ("FCC" or "Commission") provide it guidance on Universal Service Fund ("USF") reseller contribution issues that arose during USAC audits of carrier-filed FCC Forms 499. In the following comments, Atomic limits its response to taking issue with the validity of and practicality of collecting USF on SMS messaging revenues.

II. USAC Lacks Authority to Make Policy

USAC's authority is limited to administering the USF; it may not make policy.²

III. Additional Burden to Small Business During an Economic Crisis

Internationally, SMS has permeated societies to the point where SMS applications and SMS based services are commonplace. The SMS market in the United States is catching up, with P2P (person to person) messaging rates growing rapidly. However, the US still lags woefully behind in terms of P2B (person to business) and B2P (business to person) type automated SMS services. Many new businesses are cropping up to fill this void, even during an economic nightmare. Atomic is one such business, however we could not continue operations under the weight of USF requirements to audit, calculate, and pay portions of our revenue into the USF fund.

¹ See Comment Sought on Universal Service Administrative Company's Request for Universal Service Fund Policy Guidance, Public Notice, WC Docket No. 06-122 and CC Docket No. 96-45, DA 11-432 (rel. March 7, 2011) ("2011 Public Notice").

² 47 C.F.R. § 54.702(c) ("The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.").

IV. Nature of the USF Fund as it Relates to SMS

The USF fund was created shortly after the passing of the Telecommunications Act of 1996. It provides support to promote access to telecommunications services at reasonable rates for those living in rural and high-cost areas, income-eligible consumers, rural health care facilities, and schools and libraries.³

According to an official FCC webpage⁴, one of the primary goals of the USF is to provide access to telecommunications access to enable access to emergency services; “Because telephones provide a **vital link to emergency services**, to government services and to surrounding communities, it has been our nation’s policy to promote telephone service to all households since this service began in the 1930s.” To date, there is no possibility of accessing emergency services using SMS. There are no programs that enable access to 911 emergency services via SMS messaging.

V. Practicality of Calculating and Collecting USF Percentages

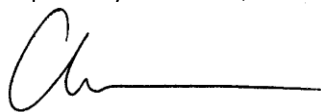
The FCC calculates the quarterly percentage of the interstate and international revenue (contribution factor) based on the ratio of total projected quarterly costs of the universal service support mechanism to contributors' total projected collected end-user interstate and international revenues, net of projected contributions.

The primary mechanism for calculating USF contributions is based on revenues generated through interstate and international communications. Wire-line providers use “end user” service termination addresses (where the wire ends) to determine which communications cross state and national boundaries. Wireless providers use “end user” billing addresses to determine “end user” location and identify communications that cross interstate and international boundaries. For SMS application providers like Atomic, there is no access to this information, and therefore no way to determine which SMS messages cross state or national boundaries. It simply isn’t practical to require companies like Atomic to determine which revenues are subject to USF contributions.

VI. Conclusion

For the foregoing reasons, Atomic respectfully requests that the Commission determine that SMS messaging revenue be considered and reported as “non-telecommunication” revenue.

Respectfully submitted,



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³ <http://www.fcc.gov/guides/understanding-your-telephone-bill> - Under section labeled “Universal Service Charges”

⁴ <http://transition.fcc.gov/cgb/phonebills/samplePhonebill.html> - Under section labeled “Universal Connectivity Fee”